IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 963 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
VINUBHAI VALJIBHAI TALPADA KOLI & 4 - Opponent(s)

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Appearance :

MR IM PANDYA APP for Appellant(s) : 1,
None for Opponent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 09/05/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant – State has filed this

appeal under Section 378 of the Code of Criminal Procedure, 1973 and challenged the judgment and order of acquittal rendered on 28-2-2006by the Additional Sessions Judge, Dhrangadhra in Sessions Case No.15 of 2001 acquitting the respondents accused for the offences punishable u/ss 143, 147, 148, 149, 302, 201 and 120-B of the I.P. Code.

2. In brief, the prosecution case was that complainant Jagdishbhai Maganbhai was the brother of deceased Khodabhai Maganbhai who was serving as Pointman at Chuli Railway Station. Before about 4 to 5 days of the incident deceased Maganbhai Khodabhai went to the house of the complainant Jesingbhai at about 6-00 p.m. On inquiry by the complainant as to why he was not attending his duty, Maganbhai Khodabhai replied that one Meenaben of village Chuli ran away with Pravin of the same village and the accused – respondents who were relatives of Meenaben suspected that deceased Maganbhai Khodabhai was involved in the said incident and they were giving threats to kill him. Therefore, he was not able to attend his duty.

Thereafter Khodabhai Maganbhai asked the complainant to leave him at the railway station and therefore the complainant went to Dhrangadhra railway station with deceased Maganbhai Khodabhai. Thereafter on 11-6-2000 at about 11-00 a.m. one Ramesh Shanker serving at Chuli railway station and Jerambhai Maganbhai the brother of the complainant came to him and informed that dead body of Maganbhai Khodabhai with burn injuries was lying near telephone pole at Chuli Home Signal. Therefore, the complainant went to the place of the incident and found dead body of Maganbhai Khodabhai.

3. On the basis of the complaint filed by Jesingbhai Maganbhai offence was registered as I – CR No.8 of 2000 for the offences punishable u/s 302, 120-B and 114 of the I.P. Code by Western Railway Police Station, Surendranagar and investigation was started. During the course of investigation inquest panchanama and panchanama of scene of offence were drawn. The muddamal articles were recovered by drawing panchanama and dead body of Khodabhai Maganbhai was sent for postmortem. The statement of witnesses were

recorded and the accused were arrested.

4. On completion of investigation, charge sheet was laid before learned J.M.F.C., Dhrangadhra. As the offence was exclusively triable by the Sessions Court, the case was committed to the Sessions Court, Dhrangadhra and it was registered as Sessions Case No. 8 of 2000. The leaned Addl. Sessions Judge, Dhrangadhra framed charge at Exh.13 against the accused for the offences punishable u/ss 143, 147, 149, 302, 201 and 120-A of the I.P. Code. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge. On completion of recording of evidence, the learned trial Judge explained to the accused the incriminating circumstances appearing in the evidence against them. The accused explained the incriminating circumstances in their further statement recorded u/s 313 of the Code of Criminal Procedure and denied having committed the offence. The accused also filed written statements. Accused No. 1 Vinubhai Valjibhai, accused No.2 Shankerbhai Talshibhai, accused

No. 3 Jesingbhai Shivabhai and accused No.5 Savshibhai Shivabhai in their written statement stated that Meena the daughter of Bhupatbhai Valjibhai ran away with one Pravin; therefore, Bhupatbhai lodged a complaint before the police wherein deceased Khodabhai Maganbhai was arraigned as an accused and therefore, before the incident deceased Khodabhai Maganbhai was absconding. It is further explained by the accused that muddamal note-book does not belong to deceased Khodabhai Maganbhai; that the application produced from the office of Railway Station is also not in the hand-writing of deceased Khodabhai Maganbhai but it is fabricated and false case is foisted upon them and they are innocent and they have not committed any offence.

5 Accused No. 4 Labhubhai Talshibhai in his written statement stated that complaint for the offence punishable u/ss 363, 366 and 114 of the I.P. Code was lodged against deceased Khodabhai Maganbhai before Dhrangadhra Police Station and offence was registered as I – CR No.72 of 2000, wherein it was alleged that niece of co-accused Vinubhai Valjibhai was

kidnapped by deceased Khodabhai Maganbhai; that Khodabhai was absconding; that other accused are distant relatives of accused Vinubhai Valjibhai; that the complainant and the accused belonged to the same caste. The accused further explained that the note-book does not bear hand-writing of deceased Khodabhai Maganbhai and it has been fabricated with a view to rope the accused in the offence and false case is filed against him.

6. The accused also examined four defence witnesses and got produced certain documents through the witness.

7. After hearing the learned A.P.P. for the State and learned advocate for the accused, the trial Court found that the prosecution failed to prove the charge levelled against the accused and consequently acquitted the accused for the offences charged against them. Being aggrieved and dissatisfied by the impugned judgment, State has preferred this appeal.

8. We have heard the learned A.P.P. for the State at length and in great detail. We have

also perused the impugned judgment and record and proceedings of the case.

9. It appears from the evidence adduced before the trial Court that the entire prosecution case is based upon the circumstantial evidence and there is no eye witness to the incident.

10. In order to prove its case, the prosecution examined in all 34 witnesses. However, there is no direct evidence indicating involvement of the accused in the offence.

11. The prosecution mainly relied upon the muddamal article No.23 note-book. The note-book was allegedly found near the dead body of Khodabhai Maganbhai and the same was recovered by the Investigating Officer as muddamal article No. 23 during the investigation. The trial court strangely permitted the prosecution to produce muddamal Article 23 note-book as documentary evidence through P.W. 34 Pannasinh Puransinh Exh. 79. The evidence of this witness indicates that there was writing in seven pages of the note-book

and it was given Exh. 82 and their xerox copies were produced at mark 22/1 to 22/5. The learned trial Judge gave separate exhibit to page No.3 of Exh. 82 as Exh.119 and note in that regard is also made in Exh. 82. Similarly, in order to prove that note-book was in the hand-writing of the deceased, the leave applications given by the deceased in his office were collected as muddamal articles No. 25 to 29. The learned trial Judge admitted these muddamal articles as documentary evidence Exh.42 to 46 through P.W. 12 Bipinchandra Pandya Exh. 41. Normally, when any article is recovered as muddamal article, if it is in the form of document, it could not have been allowed to be produced as documentary evidence. However, as the learned trial Judge permitted the muddamal articles to be produced as documentary evidence, we are required to assess evidentiary value of the documents.

12. It is alleged that the note-book and other articles were found near the place of the incident and they were recovered by drawing panchanama Exh. 80 and 81. In order to prove the panchanama, the prosecution examined

panch P.W. 13 Sikandarbhai Babubhai Shaikh at Exh.49. The witness turned hostile and did not support the prosecution case with regard to the panchnama of recovery of muddamal articles from the place of the incident. The witness was confronted with the contents of panchnamas Exhs. 80 and 81. It appears from the cross-examination of the witness that he was selling cold-drinks and his cabin was opposite the railway police station. In view of this, evidence of this witness cannot be relied on.

13. The prosecution also examined P.W. 18 Haribhai Jinabhai, who was another panch to panchnamas Exh.80 and 81, at Exh. 57. The witness also turned hostile and did not support the prosecution case. The witness was confronted with the contents of panchnamas Exh.80 and 81. In view of this evidence, panchnamas Exh. 80 and 81 with regard to recovery of muddamal article No.23 note-book and other articles cannot be relied upon.

14. The prosecution examined Investigating Officer P.W. 34 Pannasinh Puransinh at Exh. 79 to prove recovery of muddamal article No. 23

note-book i.e. Exh. 82 – 119. It is alleged by the prosecution that muddamal article No.23 (Exh. 82-119) was in hand-writing of deceased Khodabhai Maganbhai.

15. In order to prove that muddamal article No. 23 (Exh. 82 – 119) was in the hand-writing of deceased Khodabhai, the prosecution recovered leave applications submitted by deceased Khodabhai Maganbhai in his office as muddamal articles No. 25 to 29 by drawing panchnama Exh. 91. In order to prove panchnama Exh.91, the prosecution examined panch witnesses P.W. 20 Ranchhodbhai Prabhudas at Exh.59 and P.W.21 Chhelabhai Vahabhai at Exh. 60. Both these witnesses turned hostile and did not support the prosecution case. The witnesses were confronted with the contents of panchnama Exh.91 P.W. 20 Ranchhodbhai Prabhudas admitted that his tea-stall (chani-lari) is situated at Railway Station, Chuli and he used to serve tea at the police choky and railway station and on that account his signatures were taken in panchnama Exh. 91. In view of this evidence, Panchnama Exh.91 with regard to recovery of muddamal articles No. 25 to 29 does not inspire confidence. As

discussed earlier, strangely these applications have been got produced as documentary evidence through P.W.12 Bipinchandra Kalidas Pandya Exh. 41. The witness was a Traffic Inspector at Dhrangadhra Railway Station. The prosecution examined this witness to prove that the leave applications were in the hand-writings of the deceased. According to the witness, deceased Khodabhai Maganbhai used to submit leave applications in his hand-writing and muddamal articles No.25 to 29 i.e. leave applications Exh. 42 to 46 were submitted by him. The witness admitted that leave applications Exh. 42 to 46 were not written in his presence but were forwarded by the Railway Station Master, Chuli to him. In view of this evidence, it cannot be said that leave applications Exh. 42 to 46 were in the hand-writings of deceased Khodabhai Maganbhai. There is no investigation that applications Exh. 42 to 46 were written by the deceased. Likewise, there is no investigation that muddamal article No.23 note-book (Exh.82/119) and applications Exh. 42 to 46 were written by the same person. The investigating agency did not obtain

hand-writing expert's evidence in that regard. Therefore, there is no cogent and reliable evidence to indicate that muddamal note-book was in hand-writings of deceased Khodabhai Maganbhai. In our view, muddamal article No.23 (Exh.82/119) does not implicate accused – respondents in the offence. Under the circumstances, no useful purpose would be served in elaborately discussing the contents of note-book.

16. In order to prove the charge the prosecution examined as many as 34 witnesses. We feel sorry to observe that the learned trial Judge recorded evidence mechanically without ascertaining as to whether the witnesses examined are necessary or relevant witnesses. The learned trial Judge did not try to ascertain as to which fact was sought to be proved through these witnesses. We may say that some of the witnesses examined by the prosecution were not at all necessary to prove the charge levelled against the respondents.

17. As observed earlier, except the circumstantial evidence, there is no other

evidence to prove the prosecution case. The prosecution heavily relied upon muddamal article 23 -writing Exh.119. But as observed earlier, we are unable to accept the said evidence as trustworthy and reliable evidence to connect the respondents with the offence.

18. It is not in dispute that there is no eye witness to the incident. The prosecution examined younger brother of deceased Khodabhai P.W. 1 Jesingbhai Maganbhai Koli at Exh.21. The evidence of this witness indicates that before about 4 to 5 days of the incident deceased went to his house and on inquiry as to why he was not attending his duty, the deceased did not give any reason and thereafter the witness did not meet him after leaving deceased at Dhrangadhra Railway Station. The evidence also indicates that thereafter on the day of the incident when the witness was at his house his younger brother P.W. 11 Jerambhai came to him and informed that somebody has killed Khodabhai Maganbhai by burning and his body is lying near railway crossing. Therefore, the witness went at the place of incident and thereafter lodged complaint. The witness

admitted that he was informed about the incident at about 11-00 a.m. and then he went to village Chuli at about 1-30 p.m. to 2-00 p.m. The evidence of this witness also indicates that when he went to the place of incident two policemen were present but he did not lodge any complaint and he did not suspect any one in the incident but he lodged complaint Exh. 22 when he found muddamal diary wherein the names of the accused were mentioned. As regards muddamal article No.23 (Exh.82-119) the witness admitted that it was shown to him after about 3-4 days of the incident by the police at Surendranagar and that it does not bear name of Khodabhai. In view of this evidence it is difficult to believe that the complaint was filed after muddamal article 23 note -book was found from the place of incident. The evidence of this witness also indicates that name of Khodabhai was disclosed in the incident of Meenaben running away with Pravin. Therefore, a possibility cannot be ruled out that the deceased was avoiding investigation in respect of said incident. Therefore, the evidence of this witness does not inspire cofidence.

19. The prosecution produced complaint at Exh.22. It was given on 11-6-2000. It is alleged therein that deceased Khodabhai met the witness before about 4 to 5 days of the incident and on inquiry by the complainant with the deceased as to why he was not attending his duty, the deceased informed him that Meenaben of village Chuli had run away with one Pravin and the accused who were relatives of Meenaben, were giving threats to kill him and therefore he was scared and was not attending his duty. It is further alleged that the complainant left the deceased at the railway station and thereafter, the dead body was found near Chuli railway signal. In view of this evidence, it appears that before about 4 to 5 days of the incident, deceased Khodabhai Maganbhai had gone to the house of the witness and thereafter the deceased did not meet the witness. It also appears from the complaint that name of the deceased was disclosed in the incident wherein girl Meenaben of village Chuli ran away with one Pravin and the relatives of Meenaben suspected that the deceased was involved in that incident. There is no evidence as to where the deceased was

between the period when the witness left him at the railway station and his dead body was found near Chuli Home Signal (railway track). It appears from the trend of cross-examination of the witness that deceased Khodabhai Maganbhai was absconding as his name was disclosed in the incident of Meenaben running away with Pravin.

20. The prosecution examined P.W. 5 Rameshbhai Shankerbhai at Exh. 33 at whose instance the muddamal articles were recovred from the place of incident. The witness turned hostile and did not support the prosecution case. The witness was confronted with the police statement. The witness denied having stated in his police statement that when he went to lit lamp at down signal, he noticed plastic bag containing certain articles and on opening it he found clothes of deceased Khodabhai and the muddamal articles were recovered after drawing panchnama. In view of this evidence recovery of muddamal article No. 23 note-book becomes doubtful.

21. The prosecution examined P.W. 19

Bahadursinh Pathubha Parmar at Exh. 57. The witness was serving as Assistant Sub-Inspector (A.S.I.) at Kodh Outpost in Dhrangadhra Taluka in the year 2000 when the offence was registered as I – CR No.72 of 2000 for the offences punishable u/s 363, 366 and 114 of the I.P. Code against deceased Khodabhai Maganbhai and Pravin on the basis of complaint filed by Goghabhai Valjibhai of village Chuli that his niece Meenaben was kidnapped by Pravin Shivabhai. The witness was conducting investigation in respect of that offence and according to the witness deceased Khodabhai Maganbhai was not traceable at that time. The evidence of this witness indicates that deceased Khodabhai Maganbhai was serving as Pointman at Chuli Railway Station and the Station Master, Chuli Railway Station was interrogated and he was informed that deceased was not attending his duty since 4-6-2000. The evidence also indicates that the witness was frequently going to the house of deceased Khodabhai Maganbhai for investigation with regard to the said offence but Khodabhai Maganbhai was not found at his house and he was absconding. In view of this evidence, it clearly emerges

that the name of deceased Khodabhai was disclosed in the said offence and the deceased was absconding with a view to avoid interrogation in the offence. There is no other reliable evidence to indicate that the accused gave threats to the deceased, and therefore, it is difficult to believe that the deceased was not attending his duty as the respondents allegedly gave threats to kill him.

22. The report under Section 154 of the Code Criminal Procedure, 1973 produced at Exh. 22 indicates that the incident occurred before 11-00 hours on 11-6-2000 and the complaint was lodged at 19-55 hours. Complainant P.W. 1 Jesingbhai Exh. 21 deposed that when he went at the place of the incident, he did not suspect any one but on the basis of the diary found at the place of incident he lodged complaint against the accused – respondents. As observed earlier, muddamal article No. 23 diary does not inspire confidence, it is difficult to believe that it was recovered from the place of incident. Even it is difficult to believe that it belonged to the deceased. Therefore, the

complaint lodged on the basis of muddamal article 23 diary cannot be relied upon to connect the accused – respondents in the offence. It appears from the evidence that when the complainant went at the place of incident two policemen were present but strangely no complaint was filed. The report also indicates that the incident was reported to the police station at Exh.19-15 hours on 11-6-2000. The panchanama of scene of offence Exh. 80 and panchnama of recovery of muddamal articles from the place of incident Exh. 81 were drawn between 17-15 and 19-45 hours. How panchanama could have been drawn before registration of offence. Moreover, there is no explanation with regard to delay caused in filing of the complaint. Taking cumulative effect of this evidence, in our view, involvement of the respondents in the offence becomes doubtful.

23. The prosecution examined P.W. 6 Gordhanbhai Shankerbhai at Exh. 34. The witness noticed dead body of Khodabhai Maganbhai and informed the Station Master, about dead body of Khodabhai Maganbhai. The evidence of this witness does not implicate

the respondents in the offence.

24. The prosecution examined P.W. 11 Jerambhai Maganbhai Koli at Exh. 40. The witness was the younger brother of deceased Khodabhai Maganbhai. The evidence of this witness indicates that he was informed about the burnt body of Khodabhai by one Bababhai and thereafter he informed his brother P.W. 1 Jesingbhai and father. The evidence of this witness does not implicate the respondents in the offence.

25. The prosecution examined P.W. 14 Geetaben Khodabhai at Exh. 51. The witness was the daughter of deceased Khodabhai Maganbhai. According to the evidence of this witness as Meenaben ran away with one Pravin, the respondents were giving threats to deceased Khodabhai and therefore he was not returning home. The witness admitted that name of deceased Khodabhai was involved in the incident wherein Meenaben had ran away with Pravin. The witness also admitted that the police was coming to her house to inquire about Khodabhai and therefore Khodabhai was not attending his duty. The witness also

admitted that there was no occasion for her to talk with the accused. In view of this evidence, it clearly emerges that name of Khodabhai was disclosed in the incident wherein girl of the village ran away with a boy and the police was frequently visiting her house to inquire about deceased Khodabhai. It appears that with a view to avoid interrogation deceased Khodabhai did not go to his house and also did not attend his duty. In view of this evidence, it cannot be believed that the respondents gave threats to deceased Khodabhai and therefore deceased was not attending his duty. In our view, evidence of this witness cannot be relied upon to connect the respondents in the offence.

26. The prosecution examined P.W. 26 Kamuben Jesingbhai Koli at Exh. 65. The witness was 'Bhabhi' (sister-in-law i.e. elder brother's wife) of the deceased. According to the witness deceased Khodabhai Maganbhai came to her house before about 5 to 6 days of the incident and informed that the accused were giving threats to kill him. The witness also deposed that the accused had also come to her house to give threats. The evidence of

this witness is contrary to the evidence of P.W. 1 Jesingbhai and P.W.11 Jerambhai Exh. 40 as both these witnesses have not deposed about the accused coming to their house and giving threats to the deceased. The witness was confronted with her police statement. It emerges from the evidence of this witness that the witness is not telling truth and therefore her evidence cannot be relied upon.

27. The prosecution also examined panch witness P.W. 29 Bharatbhai Tapubhai Raval at Exh. 69. The witness is panch to arrest of accused Jesingbhai Shivabhai, Labhubhai,Talshibhai and Savshibhai Shivabhai. The panchnama is at Exh. 93. The witness turned hostile and did not support the prosecution case.

28. The prosecution also examined P.W. 24 Hiteshbhai Sureshbhai at Exh. 63 and P.W. 25 Mansukhbhai Kanjibhai at Exh. 64. The witnesses are panchas to panchnama Exh 92 in respect of arrest of accused Vinubhai Laljibhai and Shankerbhai Talshibhai.

29. The prosecution examined panch P.W. 29

Bharatbhai Tapubhai Raval at Exh. 69. The witness is panch to discovery panchanama Exh.73. However, the witness was declared hostile and did not support the prosecution case.

30. The prosecution examined P.W. 32 Mepabhai Merabhai Bharwad at Exh. 72 to prove discovery panchanama Exh. 73. It appears from the evidence of this witness that the witness was called at Surendranagar Railway Station with other panchas and thereafter panchnama Exh. 73 was drawn. The evidence of this witness indicates that the witness was serving tea and 'bhajiya' at the railway station. According to the witness, the Railway Police Station is adjoining to Railway Station and he was called at the police station at about 9-00 in the morning and thereafter he along with others started to go to the place of incident in jeep. Panchnama Exh. 73 indicates that preliminary panchnama was drawn at the police station and thereafter the respondents took the panchas and police to the place of incident. It also indicates that it is a joint panchnama and muddamal stones were discovered from the

public place. In view of this, it cannot be said that the muddamal stones were discovered at the instance of the respondents. Therefore, in our opinion, discovery panchnama Exh. 73 cannot be relied upon.

31. The prosecution examined P.W. 4 Dr. Ganeshbhai Pyarelal Govekar at Exh. 30. The witness performed postmortem of dead body and external and internal injuries found on the dead body were recorded in the postmortem report Exh. 33. According to the witness, cause of death was strangulation. The witness admitted that no opinion was given in the postmortem report that cause of death was strangulation but it was stated that opinion could be given only after receiving viscera report. Viscera Report Exh. 29 indicates that presence of poison was not found in the viscera.

32. The postmortem Report Exh. 32 indicates that the injuries were found on nose and mouth and final opinion could not be given. In view of this evidence and looking to the injuries found on dead body, in our view,

death was homicidal. However, there is no reliable evidence to connect the respondents with homicidal death of deceased Khodabhai Maganbhai.

33. The prosecution examined P.W. 2 Hasmukhbhai Odahvjibhai at Exh. 24. The witness was a Scientific Officer-cum-Asstt. Chemical Analyser of F.S.L. who examined , in respect the muddamal articles sent to F.S.L. for analysis. The prosecution also examined P.W. 3 Premjibhai Dharmashibhai Kumbhani at Exh. 27 who was also Scientific Officer of F.S.L., who received viscera, P.W. 9 Avdheshram Ramanujram at Exh.38, who was Railway Station Master at Dhrangadhra and who received telephone call from P.W.7 Manojkumar in respect of dead body, P.W. 10 Revabhai Bijalbhai at Exh.39, who took dead body to the Government Hospital; P.W. 16 Govindbhai Bhimabhai Darbar at Exh. 54 who allegedly gave loan of Rs.5000/- to deceased Khodabhai, P.W. 17 Ashokbhai Shahablal Malvi at Exh.55 in respect of map Exh. 56, P.W. 27 Bhikhabhai Tidabhai Koli at Exh.67 who arrested accused Vinubhai Laljibhai; Shankerbhai Talshibhai and P.W. 33 Natubha

Jashubha Parmar at Exh. 74. The evidence of all these witnesses is not material or relevant for the purpose of this appeal and therefore their evidence is not elaborately discussed in this judgment.

34. The prosecution examined P.W. 7 Manojkumar Jagannathprasad Shrivastav at Exh.35, P.W. 8 Laljibhai Talshibhai at Exh. 36 and P.W. 15 Bharatbhai Savjibhai at Exh. 53. All these three witnesses turned hostile and did not support the prosecution case. Hence, the evidence of these witnesses cannot be relied upon.

35. The prosecution examined Investigating Officer P.W. 34 Pannasinh Puransinh at Exh. 79. The evidence of this witness indicates that dead body was identified by P.W.1 Jesingbhai and offence was registered and thereafter investigation was conducted. The witness admitted that pages No.1 to 10 of muddamal note-book (Exh.82/119) does not indicate that it belonged to deceased Khodabhai Maganbhai. The witness also admitted that it was not revealed during investigation that the accused gave threats to deceased

Khodabhai Maganbhai and that deceased did not lodge any complaint that the respondents gave threats to kill him. In view of this, it clearly emerges that except alleged muddamal article No. 23, there is no independent, cogent and reliable evidence to connect the respondents in the offence. Even that evidence is also not reliable and trustworthy to implicate the respondents in the offence.

36. Accused No. 1 examined D.W. 1 Rukhiben Bhupatbhai at Exh.156. According to the witness, her daughter Meenaben ran away with Pravin and a complaint was lodged against him and Khodabhai Maganbhai and Khodabhai was absconding. The said accused also examined D.W.2 Rajuben Bhimabhai at Exh. 157 to prove that deceased Khodabhai Maganbhai had kidnapped Meenaben and the statement of this witness was recorded by the police in respect of said offence.

37. The accused No. 4 examined Vinubhai Gagjibhai at Exh. 159 as D.W. No.1. According to the witness, accused Labhubhai Talshibhai was with him between 12-00 a.m.

on 10-6-2000 and 3-00 a.m. on 11-6-2000. The accused also examined D.W. 2 Ramcharan Darbari Gor at Exh. 163 to prove that accused Labhubhai Talshibhai was on duty from 7-30 a.m. to 7-30. p.m. on 10-6-2000. The witness also produced record of railway to prove his attendance. In our view, the evidence of these witnesses does not require elaborate discussion as the prosecution failed to prove the case beyond reasonable doubt against the respondents.

38. In view of above, the evidence adduced by the prosecution clearly indicates that except circumstantial evidence, there is no other independent, cogent and reliable evidence to connect the respondents in the offence. It appears that Khodabhai Manabhai was named as an accused in the offence of kidnapping and the investigation was in progress and Khodabhai Maganbhai was absconding and was not traceable for interrogation in the said offence. The evidence of P.W. 1 Jesingbhai indicates that before about 4 to 5 days of the incident, deceased Khodabhai Maganbhai came to his house and allegedly informed about threats

given by the respondents. However, there is no evidence as to where the deceased was after leaving house of P.W. 1 Jesingbhai. Moreover, recovery of note book does not inspire confidence and the respondents canno be implicated on the basis of such a weak piece of evidence. Therefore, there is no direct evidence to connect the respondents in the offence. Therefore, the learned trial Judge was justified in not relying upon such a weak piece of evidence. In our view no interference is warranted in the impugned judgment.

39. For the foregoing reasons, in our view, the learned trial Judge was justified in recording acquittal of the accused and no interference is warranted in the impugned judgment. Hence, leave to appeal is refused and the appeal stands dismissed.

(J.R. Vora,J.)

(Bankim N. Mehta, J.)

/JVSatwara/